

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT W. JACKSON, III,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 06-300-SLR
	)	
CARL C. DANBERG,	)	
THOMAS L. CARROLL, PAUL	)	
HOWARD, OTHER UNKNOWN STATE	)	
ACTORS RESPONSIBLE FOR AND	)	
PARTICIPATING IN THE CARRYING	)	
OUT OF PLAINTIFF'S EXECUTION,	)	
all in their individual and	)	
official capacities,	)	
	)	
Defendants.	)	

**ORDER**

At Wilmington this 21<sup>st</sup> day of September, 2007, having considered the parties' letter briefs submitted in response to the court's concerns;

IT IS ORDERED that:

1. In light of the absence of precedent from the United States Court of Appeals for the Third Circuit, as well as from any District Court in this Circuit, with respect to the standard of review applicable to an action brought pursuant 42 U.S.C. § 1983 by a death row inmate plaintiff challenging defendants' lethal injection procedure, the court adopts the standard of review articulated by the United States Court of Appeals for the Eighth Circuit in Taylor v. Crawford, 487 F.3d 1072 (8<sup>th</sup> Cir. 2007). Specifically, the standard of review the court will apply to the issues at bar is whether the lethal injection

protocol to be used by the State in carrying out a sentence of death presents a substantial risk of inflicting unnecessary pain. Id. at 1079-1082. To that end, inquiry into the state of mind of particular state actors is irrelevant. Id. at 1081.

  
\_\_\_\_\_  
United States District Judge